IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ERIN ALTMAN,	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION FILE**
	)	**NO. 21-C-02854-S1**
ARCH INSURANCE COMPANY, et al.,	)	
Defendants.	)	
	)	

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The above-styled matter came before this Court on Defendant Arch Insurance Company's ("Arch") Motion to Dismiss pursuant to O.C.G.A. §§ 9-11-12(b)(1) and (6). After review of the pleadings and applicable Georgia law, the Court hereby **FINDS** and **ORDERS** as follows:

This action arises from a collision at the intersection of Brooks Road and Brooks Pointe Court in Gwinnett County between Plaintiff's vehicle and a commercial truck owned by Veterans Empowerment Organization of Georgia, Inc. ("VEO") and being driven by Defendant Edward Davis. As a result of the collision, Plaintiff filed the instant personal injury lawsuit against VEO, its truck driver, and VEO's insurer, Arch, alleging severe and permanent bodily injuries all over her face and body. Plaintiff alleges standing to bring a direct action against Arch because VEO is purportedly a "motor carrier" under O.C.G.A. § 40-2-1(6)(B), in that it "operates or controls commercial motor vehicles as defined in 49 C.F.R. Section 390.5 or this chapter whether operated in interstate or intrastate commerce, or both." Moreover, Plaintiff further alleges that VEO is a "motor carrier" under O.C.G.A. § 40-1-100(12)(A) because it "own[s], control[s], operat[es], or manag[es] . . . motor vehicle[s] . . . used in the business of transporting for hire persons, household goods, or property . . ." and because the subject truck had a GVWR greater than 10,000lbs." See

also O.C.G.A. §§ 40-1-112(c), 40-2-140(d)(4). Standing is not an issue. The purpose of permitting joinder of the insurance carrier is in furtherance of the public policy to "protect the public" against injuries caused by the motor carrier's negligence. The intent is that the insurer is to stand in the shoes of the operator of a commercial motor vehicle and be liable in any instance of negligence where that motor carrier is liable, with an eye toward ensuring that the insurance carrier's substantial resources are put toward safety and public protection.

As such, the crux of the issue to be decided here is only whether VEO is a "motor carrier." There is no allegation of any "for hire" component in the instant case, as VEO voluntarily operates its own commercial vehicles intrastate picking up and delivering volunteer items to veterans, removing O.C.G.A. § 40-1-100(12)(A) from the calculation. However, this would not be the same analysis for a plumber, electrician, welder or carpenter driving his/her own commercial truck and/or van (with GVRW weight over 10,001 pounds) for his/her own personal business purposes carrying only their own property, as these individuals themselves could arguably be the "person for hire" which would make O.C.G.A. § 40-1-100(12)(A) applicable. Here, the relevant analogy would be a church that owned a commercial vehicle over 10,001 pounds that was only used intrastate to pick up its church members from the train station for free and return them after service for free, as long as it carried 15 passengers or less (including the driver). In this scenario, the only possible determination that it was a motor carrier arises solely from the weight of the vehicle. Plainly, that is exactly what O.C.G.A. § 40-2-1(6)(B) and 49 C.F.R. Section 390.5 state. A "motor carrier" can be a commercial motor vehicle that "[h]as a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater...."

Therefore, after a granular review of the applicable statutes and for the reasons that follow, the Court is satisfied that VEO is a "motor carrier" under Georgia law. O.C.G.A. § 40-2-1(6)(B); 49 C.F.R. Section 390.5. Therefore, the direct action against Arch is permissible, and Arch's motion must be denied. O.C.G.A. § 40-2-140(d)(4). In interpreting statutes, the Court will first look at the plain language of the statute. "'In construing a legislative act, a court must first look to the literal meaning of the act. If the language is plain and does not lead to any absurd or impracticable consequences, the court simply construes it according to its terms and conducts no further inquiry.'" Drs. Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 540 (2015) (quoting Savannah Cemetery Group v. DePue-Wilbert Vault Co., 307 Ga. App. 206, 207 (2010)). Furthermore, "in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole." Id. (quoting Walker County v. Tri-State Crematory, 292 Ga. App. 411, 414-415 (2008)). "Different subsections of a statute should be read in *pari materia*, and the Court must strive to 'reconcile them, if possible, so that they may be read as consistent and harmonious with one another.'" Id. (quoting City of LaGrange v. Ga. Public Svc. Comm., 296 Ga. App. 615, 621 (2009)).

Under the direct action statute, which is codified in Title 40, Chapter 2 of the Official Code of Georgia, "[a]ny person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action the motor carrier and its insurance carrier." O.C.G.A. § 40-2-140(d)(4). The Georgia Code contains two definitions of "motor carrier" – one at O.C.G.A. § 40-2-1(6)(B) and one at O.C.G.A. § 40-1-100. The definitions section at § 40-2-1 is codified within Chapter Two and, by its own text, governs the meaning of words and phrases used in Chapter Two, including the direct action statute at issue here. The definitions in § 40-1-

100 do not appear to apply to the direct-action statute that the Court is called upon to interpret, and it cannot as VEO does not use its commercial vehicle "for hire".

Nonetheless, under this definition, "motor carrier" includes "[a]ny entity defined by the commissioner or commissioner of public safety who operates or controls commercial motor vehicles as defined in 49 C.F.R. Section 390.5 or this chapter whether operated in interstate or intrastate commerce, or both." O.C.G.A. § 40-2-1(6)(B) (emphasis added). There is no dispute that VEO "operate[d]" and "control[led]" the truck involved in this collision or that VEO was an entity defined by the Commissioner of the Department of Revenue. Therefore, the important question is whether the subject truck constituted a "commercial motor vehicle" as defined in the cited federal regulations. The cited federal regulations establish that any truck with a gross vehicle weight rating ("GVWR") over 10,001 pounds constitutes a "commercial motor vehicle." See 49 C.F.R. § 390.5. The use of the conjunction "or" is dispositive in this C.F.R., as it states with particularity what a commercial motor vehicle can mean – singularly one with a GVWR over 10,001 pounds. However, what is glaring under 49 C.F.R. Section 390.5 is that a "commercial motor vehicle" can weigh **less** than 10,0001, if only designed or used to transport more than 8 passengers for compensation or more than 15 passengers without compensation. This distinction makes Defendant Arch's arguments simply inapposite. If a 5,000 pound GVWR vehicle can or does transport more than 15 people for free, that is still a commercial motor vehicle that is subject to motor carrier status and direct action. The plain meaning of the language employed in O.C.G.A. § 40-2-1(6)(B) and 49 C.F.R. Section 390.5 make it so.

Here, the Complaint alleges that the subject truck had a GVWR over 10,001 pounds and was a "commercial motor vehicle." Pl.'s Compl. ¶ 30; 49 C.F.R. § 390.5. Therefore, VEO was a

"motor carrier" under the statute, making Arch subject to direct action. O.C.G.A. §§ 40-2-1(6)(B), 40-2-140(d)(4). Under this governing definition, an entity that owns or operates "commercial motor vehicles" is a motor carrier for purposes of O.C.G.A. 40-2-140(d)(4).

In ruling on a typical motion to dismiss under 12(b)(6) above, this Court cannot generally grant the motion unless the allegations contained within the four corners of the complaint "disclose with certainty that the [Plaintiff] would not be entitled to relief under any state of provable facts ..." Anderson v. Flake, 267 Ga. 498, 501 (1997); see also Denson v. Maloy, 239 Ga. App. 778 (1999); Cellular One, Inc. v. Emanuel Cty., 227 Ga. App. 197 (1997); Willis v. United Family Life Ins., 226 Ga. App. 661 (1997). In other words, a trial court should grant a motion to dismiss only when, assuming the allegations in the complaint are true, the plaintiff would not be entitled to any relief under the facts as stated and no evidence could be introduced which would justify granting the relief sought. Rodriguez v. Nunez, 252 Ga. App. 56 (2001); Moore v. BellSouth Mobility, 243 Ga. App. 674 (2000). Furthermore, the claim cannot be dismissed under this Code section for requesting the wrong form of relief, or no relief at all, as long as the complainant is entitled to some legal remedy under the facts as pled. Charles H. Wesley Educ. Found., Inc. v. State Election Bd., 282 Ga. 707 (2007). Finally, in deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor. Denson, supra.

Based on its findings that VEO was a motor carrier, this Court finds that the Complaint, as pled, is sufficient to state a direct action claim against Arch on at least one of Plaintiff's claims and assuming the allegations as stated in the Complaint are true, Plaintiff could be entitled to some relief under the facts as stated. Accordingly, Defendant Arch Insurance Company's Motion to

Dismiss pursuant to O.C.G.A. §§ 9-11-12(b)(1) and (6) is **HEREBY DENIED**.

SO ORDERED, this 15th day of February, 2021.

Judge Emily J. Brantley
State Court of Gwinnett County

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All Counsel of Record
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